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8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 ROOTS READY MADE GARMENTS CO.  
W.L.L.,

14 Plaintiff,

15 v.

16 THE GAP, INC., a/k/a, GAP, INC., GAP  
17 INTERNATIONAL SALES, INC., BANANA  
REPUBLIC, LLC, AND OLD NAVY, LLC

18 Defendants.  
19

No. C 07-03363 CRB

**GAP'S OPPOSITION TO ROOTS' EX  
PARTE APPLICATION TO EXTEND  
TIME TO SERVE EXPERT  
DISCLOSURE**

Date: N/A

Time: N/A

Dept: Courtroom 8, 18<sup>th</sup> Floor

Judge: Hon. Charles R. Breyer

## I. INTRODUCTION

Roots' expert reports were originally due on August 4, 2008, and Gap's rebuttals on August 18, 2008. On August 1, 2008, following a meet and confer, Gap agreed to extend Roots' time to file its expert disclosures until August 13, 2008. During the parties' meet and confer, Gap told Roots that a further extension of time would not be possible because Gap's expert was out of the country the week of August 25, and pushing expert discovery into September would conflict with pretrial deadlines that the Court had set long ago. On August 13, 2008—the day that Roots' expert report was due—Roots disclosed a **new** expert under the parties' protective order and sought leave from the Court for an extension of time to serve its expert disclosures. Granting yet another extension would prejudice Gap and disrupt the pretrial schedule that this Court has already set. On September 5, Gap must make its Rule 26(a)(3) disclosures, and it must serve any motions *in limine* on September 10. Moreover, because the parties must file numerous joint pretrial submissions on September 23, pushing expert discovery into September would jeopardize Gap's ability to prepare those submissions and be ready for trial on October 6. Roots has known about the pretrial schedule for months. Given these circumstances, the Court should deny Roots' ex parte application.

## II. FACTUAL BACKGROUND

On June 26, 2008, the parties agreed that expert disclosures would be due on August 4, 2008, and rebuttal disclosures on August 18, 2008. Declaration of Rose Darling in Support of Gap's Opposition to Roots' Ex Parte Application to Extend Time to Serve Expert Disclosure, filed herewith, ("Darling Decl.") ¶ 2; Nash Decl. ¶ 4. By that time, both Gap and Roots had already disclosed to one another the identity of the expert that each had engaged. Darling Decl. ¶ 2. On July 25, 2008, Roots' counsel contacted Gap to ask for a further extension of time to serve its expert disclosures, until August 18. *Id.* ¶ 3; Nash Decl. ¶ 7. Gap told Roots that delaying expert disclosures that much would not work because (a) Gap's expert was out of the country on a planned vacation the week of August 25 and thus would be unavailable to prepare a rebuttal report that week and (b) Rule 26(a)(3) pretrial disclosures were due on September 5 and opening motions *in limine* on September 10, and thus pushing expert discovery into September

1 would hamper Gap's ability to prepare those submissions. Darling Decl. ¶ 3. Roots, however  
 2 was insistent that it needed additional time to prepare its expert disclosures, and thus on August  
 3 1, 2008, Gap agreed to extend the time for Roots to serve its report to August 13, 2008, with  
 4 Gap's rebuttal due August 27. *Id.* This was a significant compromise, given that Gap's expert is  
 5 on vacation the week of August 25, and thus Gap would have effectively less than two weeks to  
 6 prepare a rebuttal report. Instead of serving its expert report on August 13, however, Roots on  
 7 that day disclosed to Gap **another** expert that it apparently intends to use, and sought ex parte  
 8 relief from the Court for an extension of time to serve its expert disclosures. *Id.* ¶ 4, Ex. A.

### 9 III. ARGUMENT

10 Any further delay in expert discovery would prejudice Gap and interfere with pretrial  
 11 deadlines set by this Court months ago. Under Roots' new proposed schedule, Roots would file  
 12 its expert report on August 18 and Gap would file its rebuttal on September 8. But as Roots is  
 13 well aware, Gap's expert will be out of the country and unavailable for a week before its expert  
 14 report would be due. In addition, the parties' Rule 26(a)(3) disclosures are due on September 5,  
 15 2008, three days *before* Roots proposes that Gap should serve its rebuttal report. And because  
 16 opening motions *in limine* are due on September 10, under Roots' proposal, Gap would have  
 17 little time to depose Roots' expert(s) and prepare any potential motions *in limine*.

18 Roots has known about this pretrial schedule for months. The fact that Roots apparently  
 19 decided days before its expert disclosures were due to schedule a trip to Dubai to visit Roots'  
 20 offices is hardly compelling—not to mention that the expert report is supposed to be prepared by  
 21 the *expert*, and could presumably be reviewed by counsel in Dubai. *See* Nash Decl. ¶ 5. Even  
 22 worse, Roots waited until the day its expert report was due to disclose a new expert and seek an  
 23 extension of time to serve its report. This is at best exceptionally poor planning. Under these  
 24 circumstances, the Court should deny Roots' request for a further extension of time.

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**IV. CONCLUSION**

For the foregoing reasons, the Court should deny Roots' ex parte application to extend time to serve its expert disclosure.

Dated: August 14, 2008

KEKER & VAN NEST, LLP

By: /s/ Rose Darling  
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